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ALEXANDER L. STEVAS,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-6339

KENNETH HANSON,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIFTH JUDICIAL DISTRICT

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QUESTION PRESENTED FOR REVIEW

1. Whether the theft of a court reporter's notes, resulting in her inability to transcribe a portion of a criminal defendant's trial, resulted in a violation of Petitioner's constitutional rights, based upon his claim of inability to effectively appeal his cause.

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OPINION BELOW

The May 8, 1983 opinion of the Illinois Appellate Court in the case of People v. Hanson, No. 81-312 (Fifth District), is found at page 1a of Petitioner's appendix.

JURISDICTION

Petitioner seeks this Court's review as a result of his 1981 conviction under Ill. Rev. Stat. (1981), ch. 38, § 24-1(a)(4). The Illinois Supreme Court denied Petitioner's petition for

leave to appeal on October 4, 1983.

Petitioner sought this Court's review on November 30, 1983. Jurisdiction to this Court is correctly sought by Petitioner pursuant to 28 U.S.C. § 1257. However, as treated more fully in the argument contained herein, Respondent does not believe that Petitioner has shown any reason for this Court to exercise its discretion to grant the Petition for Writ of Certiorari.

CONSTITUTIONAL PROVISIONS

Petitioner relies on the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

As noted in the opinion of the Illinois Appellate Court, Petitioner was convicted of unlawful use of weapons, in violation of Ill. Rev. Stat. (1981), ch. 38, § 24-1(a)(4). (Opinion at 1). He was sentenced to serve a term of 364 days imprisonment, and to pay a fine of $1,000.

A court reporter was present throughout Petitioner's trial, however, there is no verbatim record following the State's case-in-chief, due to the fact that a tape recorder, tapes, and

notes of the official court reporter were stolen. The court reporter was unable to complete the transcript from that point on.

On appeal, Petitioner alleged that his rights were violated in that he was denied his right to an effective appeal due to the lack of a transcript.

The appellate court rejected this claim, noting that there had been no allegation or error, nor allegation of insufficiency of the evidence. As such, the court refused to presume error, and rejected Petitioner's claim that the lost transcript violated his rights.

It is from the May 8, 1983 order of the Illinois Appellate Court that Petitioner now seeks this Court's review.

REASONS FOR DENYING THE WRIT

PETITIONER'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED WHERE A PORTION OF THE TRIAL TRANSCRIPT WAS UNAVILABLE DUE TO THE THEFT OF THE COURT REPORTER'S NOTES.

Petitioner alleges, generally, that his constitutional rights were violated because the court reporter was unable to provide a transcript of any portion of the trial subsequent to the State's case-in-chief, due to the theft of her notes.

Specifically, Petitioner alleges that Ill. Rev. Stat. (1983), ch. 110A, § 323(c) is unconstitutional in that it places a burden upon a criminal defendant-appellant, on direct appeal, for providing a report of proceedings, if no verbatim transcript is available. The statute provides, in relevant part, as follows:

> If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection.

Ill. Rev. Stat. (1983), ch. 110A, § 323(c).

Thus, the statute places the burden on the person seeking relief on appeal, be that a criminal defendant, a civil defendant, a civil plaintiff, or the People in a criminal case. The burden of preparing a report of proceedings is not placed only on a criminal defendant. Rather, it is placed on the appellant, whoever he or she may be. Furthermore, Petitioner was

not left to prepare a report of proceedings on his own; he was represented by court-appointed counsel on appeal as a result of his indigence.

Finally, Petitioner's claim of a constitutional violation is soundly refuted by the applicable caselaw regarding the right to a transcript of proceedings. It has been true for many years that an indigent defendant must be provided, free of charge, with a transcript of whatever record was made at trial. Hardy v. United States, 375 U.S. 277 (1964). However, neither Illinois (see People v. Armstrong, 43 Ill.App.3d 586, 597, 357 N.E.2d 84, 91 (1976)) nor the federal courts (see United States ex rel. Smart v. Pate, 318 F.2d 559, 562 (7th Cir. 1963) and United States v. Rhodes, 398 F.2d 655 (7th Cir. 1968), cert. denied, 394 U.S. 962 (1969)) recognize a claim regarding allegedly violative denial of a transcript, absent some fault, hostility or invidiousness on the part of the State. Such was neither present nor alleged in the instant case. Rather, Petitioner's allegation merely contends that the loss of the court reporter's notes is somehow violative of his constitutional rights. There is simply no basis in fact or law to support his claim.

In summary, the People of the State of Illinois respectfully submit that Petitioner's constitutional rights were not violated as a result of the court reporter's notes having been stolen. As such, it is respectfully requested that this

Court not exercise its discretion and deny Petitioner's petition for writ of certiorari.

CONCLUSION

In light of the foregoing, the People of the State of Illinois respectfully request that this Court deny Petitioner's petition for writ of certiorari.

Respectfully submitted,

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